



Reprinted  
February 24, 2009

## HOUSE BILL No. 1176

DIGEST OF HB 1176 (Updated February 23, 2009 8:49 pm - DI 101)

**Citations Affected:** IC 5-20; IC 23-2; IC 24-4.4; IC 24-5; IC 24-5.5; IC 24-9; IC 25-1; IC 25-34.1; IC 34-30.

**Synopsis:** Residential mortgage lending practices. Prohibits creditors, loan brokers, and certain other persons from recommending or making to, or procuring on behalf of, a borrower a first lien mortgage transaction or a home loan without grounds to believe that the borrower has the ability repay the first lien mortgage transaction or home loan based on factors that are reasonable to take into account, as determined by the appropriate regulatory authority or the attorney general's homeowner protection unit (unit), as appropriate. Provides that in the case of a first lien mortgage transaction or a home loan that: (1) is closed after June 30, 2009; and (2) has an interest rate that is subject to change during the term of the loan; the creditor may not contract for and may not charge the debtor or borrower a prepayment fee or penalty. Provides that for a home loan that is closed after December 31, 2009, the closing agent shall, upon the borrower's request, permit the borrower to inspect the closing documents, completed to set forth those items that are known to the closing agent at the time of inspection, with respect to the home loan not later than one business day before the closing. (Provides that for purposes of the requirement, "closing documents" mean the HUD-1 or HUD-1A settlement statement.) Provides that if: (1) the closing agent does not permit the borrower to inspect the closing documents in the prescribed time or manner; or (2) any items required to be set forth in the closing documents are  
(Continued next page)

**Effective:** Upon passage; July 1, 2008; July 1, 2009.

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**Riecken, Barnes, Murphy, Burton**

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January 12, 2009, read first time and referred to Committee on Financial Institutions.  
February 12, 2009, amended, reported — Do Pass.  
February 23, 2009, read second time, amended, ordered engrossed.

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incomplete at the time of the borrower's inspection; the borrower is entitled to delay or reschedule the closing within three days of the scheduled closing without penalty and without forfeiting the right to enter into the home loan or into the purchase contract. Provides that if the terms of the home loan set forth in the closing documents inspected by the borrower differ from the terms of the home loan presented to the borrower at the time of the closing: (1) the attorney general's homeowner protection unit (unit) may investigate the circumstances surrounding the home loan and take certain enforcement actions; and (2) the borrower is entitled to bring an action for certain relief against the creditor if the creditor does not conform the terms of the home loan to the terms set forth in the closing documents inspected by the borrower. Provides that a person shall not corrupt or improperly influence, or attempt to corrupt or improperly influence, a real estate appraiser or an appraisal. Provides that a creditor that issues mortgage loans in Indiana shall, not later than three business days after receiving a written application for a mortgage loan from a borrower, provide to the borrower or a notice, on a form prescribed by the unit, that includes: (1) contact information for unit; and (2) a statement that the borrower may contact the unit to report a suspected violation of the prohibition against corrupting or improperly influencing a real estate appraiser or an appraisal. Provides that the annual report provided by the mortgage lending and fraud prevention task force to the legislative council must include the following information for the most recent state fiscal year: (1) The number of complaints or reports received by the unit concerning suspected violations of the prohibition against corrupting or improperly influencing a real estate appraiser or an appraisal. (2) A breakdown of the sources of the complaints or reports, based on the complainants' interest in or relationship to the real estate transactions upon which the complaints or reports are based. (3) A description of any disciplinary or enforcement actions taken, or criminal prosecutions pursued, in connection with the complaints or reports received. Sets forth certain penalties and enforcement procedures for violations of the provisions concerning real estate appraisals. Requires a foreclosure consultant to retain all records related to services performed on behalf of a homeowner for at least three years after the termination or conclusion of the foreclosure consultant contract. Prohibits a person from engaging in, or soliciting to engage in, a real estate or mortgage transaction without a permit or license required by law. Prohibits a person from making certain representations with respect to: (1) a mortgage or real estate transaction; or (2) the property that is the subject of the transaction; if the representation is not true and the person knows or reasonably should know that the representation is not true. Provides that a practitioner of a licensed profession who has been subjected to disciplinary sanctions by the board that regulates the profession may be required to pay the costs of any real estate review appraisal obtained in connection with the disciplinary proceedings. Provides that a violation of the statutes concerning: (1) credit service organizations; and (2) mortgage rescue protection fraud; by a person licensed or required to be licensed as a real estate salesperson or broker is a violation of the statute governing the regulation of real estate salespersons and brokers and is subject to certain specified enforcement procedures and sanctions.

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February 24, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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## HOUSE BILL No. 1176

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A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 5-20-1-27, AS AMENDED BY P.L.145-2008,  
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2009]: Sec. 27. (a) The home ownership education account  
4 within the state general fund is established to support the home  
5 ownership education programs established under section 4(d) of this  
6 chapter. The account is administered by the authority.  
7 (b) The home ownership education account consists of ~~(1) fees~~  
8 ~~collected under IC 24-9-9; and (2)~~ civil penalties imposed and  
9 collected under:  
10 ~~(A) (1)~~ IC 6-1.1-12-43(g)(2)(B); or  
11 ~~(B) (2)~~ IC 27-7-3-15.5(e); or  
12 **(3) IC 24-9-4.5-10(b).**  
13 (c) The expenses of administering the home ownership education  
14 account shall be paid from money in the account.  
15 (d) The treasurer of state shall invest the money in the home

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ownership education account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

SECTION 2. IC 23-2-5-15, AS AMENDED BY P.L.230-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. **(a) Except as provided in section 20(c) of this chapter, this section does not apply to a violation or an alleged violation of section 20(b) of this chapter.**

**(b)** Any person who violates this chapter or any rule or regulation adopted under this chapter, in connection with a contract for the services of a loan broker, is liable to any person damaged by the violation, for the amount of the actual damages suffered, interest at the legal rate, and attorney's fees. If a person violates any provision of this chapter, or any rule or regulation adopted under this chapter, in connection with a contract for loan brokering services, the contract is void, and the prospective borrower is entitled to receive from the loan broker all sums paid to the loan broker.

SECTION 3. IC 23-2-5-20, AS AMENDED BY P.L.145-2008, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20. **(a) As used in this section, "first lien mortgage transaction" has the meaning set forth in IC 24-4.4-1-301(6).**

**(b) Subject to subsection (c), a person licensed, required to be licensed, registered, or required to be registered under this chapter shall not:**

- (1) recommend a first lien mortgage transaction to a creditor;**
- or**
- (2) recommend a first lien mortgage transaction to, or procure a first lien mortgage transaction on behalf of, a borrower;**

**without grounds to believe that the borrower has the ability to repay the first lien mortgage transaction based on factors that are reasonable to take into account, as determined by the commissioner.**

**(c) Subsection (b) may be enforced by a creditor to whom a first lien mortgage transaction is recommended by a person licensed, required to be licensed, registered, or required to be registered under this chapter. However, subsection (b) does not create any right of action, claim, set off, or recoupment of any kind in favor of a borrower or any other party other than:**

- (1) a creditor to whom a first lien mortgage transaction is recommended; and**

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**(2) the commissioner.**

**However, this subsection does not limit the liability of any party under IC 24-9-3-7.**

~~(a)~~ **(d)** A person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:

- (1) Employ any device, scheme, or artifice to defraud.
- (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.
- (3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.
- (4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a loan until the loan has been closed.
- (5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.
- (6) File or cause to be filed with a county recorder any document that the person knows:
  - (A) contains:
    - (i) a misstatement; or
    - (ii) an untrue statement; of a material fact; or
  - (B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.
- (7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers, unless the personal information is used in an activity authorized by the borrower or prospective borrower under one (1) or more of the following circumstances:
  - (A) The personal information is:
    - (i) included on an application form or another form; or
    - (ii) transmitted as part of an application process or an enrollment process.
  - (B) The personal information is used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit.
  - (C) The personal information is used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard

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or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

~~(b)~~ **(e) Subject to subsection (c)**, a person who commits an act described in subsection ~~(a)~~ **(d) or violates subsection (b)** is subject to sections 10, 14, 15, and 16 of this chapter.

SECTION 4. IC 24-4.4-2-201, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 201. (1) A creditor or mortgage servicer shall provide an accurate payoff amount for a first lien mortgage transaction to the debtor not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:

(a) one hundred dollars (\$100) if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided;

if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer fails to comply with subdivision (a).

**(2) This subsection applies to a first lien mortgage transaction, or the refinancing or consolidation of a first lien mortgage transaction, that:**

**(a) is closed after June 30, 2009; and**

**(b) has an interest rate that is subject to change at one (1) or more times during the term of the first lien mortgage transaction.**

**A creditor in a transaction to which this subsection applies may not**

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**contract for and may not charge the debtor a prepayment fee or penalty.**

~~(2)~~ **(3)** This subsection applies to a first lien mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the first lien mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 5. IC 24-4.4-2-201.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 201.5. (1) Subject to subsection (2), a creditor shall not recommend or make a first lien mortgage transaction to a debtor without grounds to believe that the debtor has the ability to repay the first lien mortgage transaction based on factors that are reasonable to take into account, as determined by the department.**

**(2) Subsection (1) does not create any right of action, claim, set off, or recoupment of any kind in favor of a debtor or any other party other than the department. However, this subsection does not limit the liability of any party under IC 24-9-3-7.**

SECTION 6. IC 24-4.4-3-113, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 113. Except as provided in IC 24-4.4-201.5(2),** the grant of powers to the department under this article does not affect remedies available to debtors under this article or under other principles of law or equity.

SECTION 7. IC 24-5-23.5 IS ADDED TO THE INDIANA CODE

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AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 23.5. Real Estate Appraisals**

**Sec. 1. (a)** As used in this chapter, "appraisal" means an opinion or estimation of the value of real property that is the subject of a real estate transaction.

**(b)** The term includes the following:

- (1)** The results of an automated valuation model.
- (2)** A broker's price opinion.
- (3)** A desktop evaluation.

**Sec. 2.** As used in this chapter, "appraisal company" means a sole proprietorship, firm, corporation, partnership, limited liability company, limited liability partnership, joint venture, trust, or other business unit or association that:

- (1)** performs appraisals on a regular basis for compensation through one (1) or more owners, officers, employees, or agents; or
- (2)** holds itself out to the public as performing appraisals.

**Sec. 3. (a)** As used in this chapter, "creditor" means a person:

- (1)** that regularly engages in Indiana in the extension of mortgage loans that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and
- (2)** to whom the obligation arising from a mortgage loan is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

**(b)** The term does not include a person described in:

- (1)** IC 24-9-2-6(a)(2) if the person described in IC 24-9-2-6(a)(2) is not the person extending the credit in the transaction; or
- (2)** IC 24-9-2-6(b).

**Sec. 4. (a)** As used in this chapter, "mortgage loan" means a loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against an interest in real property in Indiana.

**(b)** The term includes the following:

- (1)** A home loan subject to IC 24-9.
- (2)** A loan described in IC 24-9-1-1, to the extent allowed under federal law.
- (3)** A first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)) subject to IC 24-4.4.

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(4) A consumer credit sale subject to IC 24-4.5-2 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against an interest in real property in Indiana.

(5) A consumer credit loan subject to IC 24-4.5-3 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against an interest in real property in Indiana.

(6) A loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land:

(A) that is located in Indiana;

(B) upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and

(C) that is classified as residential for property tax purposes.

The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes.

Sec. 5. As used in this chapter, "real estate appraiser" means a person who develops an opinion of or estimates the value of real property in a real estate transaction in Indiana, regardless of whether the person is licensed or certified, or required to be licensed or certified, under the real estate appraiser licensure and certification program established under IC 25-34.1-3-8.

Sec. 6. As used in this chapter, "real estate transaction" means a transaction that involves one (1) or both of the following:

(1) The sale or lease of any legal or equitable interest in real estate located in Indiana.

(2) The making, refinancing, or consolidation of a mortgage loan.

Sec. 7. (a) As used in this chapter, "settlement service provider" means a person that provides any settlement service (as defined in 24 CFR 3500.2) in connection with the closing of a real estate transaction.

(b) The term includes a closing agent (as defined in IC 6-1.1-12-43(a)(2)).

Sec. 8. A person shall not corrupt or improperly influence, or attempt to corrupt or improperly influence:

(1) the independent judgment of a real estate appraiser with respect to the value of the real estate that is the subject of a

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1 real estate transaction; or

2 (2) the development, reporting, result, or review of an  
3 appraisal prepared in connection with a real estate  
4 transaction;

5 through bribery, coercion, extortion, intimidation, collusion, or any  
6 other manner.

7 Sec. 9. (a) This subsection applies with respect to a completed  
8 application for a mortgage loan that is received by a creditor after  
9 December 31, 2009. A creditor shall, not later than three (3)  
10 business days after receiving a completed written application for  
11 a mortgage loan from a borrower or prospective borrower,  
12 provide to the borrower or prospective borrower a notice, on a  
13 form prescribed by the homeowner protection unit under  
14 subsection (b), that includes:

15 (1) contact information for the homeowner protection unit  
16 established by the attorney general under IC 4-6-12,  
17 including:

18 (A) an electronic mail address for the homeowner  
19 protection unit; and

20 (B) the toll free telephone number described in  
21 IC 4-6-12-3.5; and

22 (2) a statement that the borrower or prospective borrower  
23 may contact the homeowner protection unit to report:

24 (A) a suspected violation of section 8 of this chapter; or

25 (B) other information about suspected fraudulent  
26 residential real estate transactions, as authorized by  
27 IC 4-6-12-3.5(b).

28 The creditor shall provide the notice required by this subsection by  
29 delivering it to the borrower or prospective borrower or placing it  
30 in the United States mail to the borrower or prospective borrower  
31 within the time prescribed by this subsection.

32 (b) Not later than September 1, 2009, the home owner  
33 protection unit established by the attorney general under IC 4-6-12  
34 shall prescribe the form required under subsection (a) for use by  
35 creditors who receive completed written applications for mortgage  
36 loans after December 31, 2009.

37 (c) The homeowner protection unit established by the attorney  
38 general under IC 4-6-12, in cooperation with the real estate  
39 appraiser licensure and certification board created by  
40 IC 25-34.1-8-1, shall publicize and promote awareness of the  
41 availability of the:

42 (1) electronic mail address; and

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(2) toll free telephone number;  
described in subsection (a)(1) to accept complaints from real estate appraisers, creditors, borrowers, potential borrowers, and other persons concerning suspected violations of section 8 of this chapter.

(d) A creditor may share any information obtained concerning a suspected violation of section 8 of this chapter with the homeowner protection unit established by the attorney general under IC 4-6-12. The homeowner protection unit may, in turn, share any information received from a creditor under this subsection with the following:

(1) Federal, state, and local law enforcement agencies and federal regulatory agencies in accordance with IC 4-6-12-3(a)(4).

(2) Any entity listed in IC 4-6-12-4 that may have jurisdiction over any person who is suspected of violating section 8 of this chapter, including any entity that may have jurisdiction over the creditor or an agent of the creditor if the homeowner protection unit suspects that the creditor or an agent of the creditor has violated section 8 of this chapter. However, the homeowner protection unit and any entity listed in IC 4-6-12-4 that receives information under this subdivision shall treat the information, including information concerning the identity of the complainant, as confidential and shall exercise all necessary caution to avoid disclosure of the information, except as otherwise permitted or required by law.

(e) A:

(1) real estate appraiser, creditor, borrower, potential borrower, or other person that makes, in good faith, a voluntarily disclosure of a suspected violation of section 8 of this chapter to the homeowner protection unit under this section or otherwise; and

(2) director, officer, manager, employee, or agent of a person described in subdivision (1) who makes, or requires another person to make, a disclosure described in subdivision (1);

is not liable to any person under any law or regulation of the United States, under any constitution, law, or regulation of any state or a political subdivision of any state, or under any contract or other legally enforceable agreement, including an arbitration agreement, for a disclosure described in subdivision (1) or for failing to provide notice of a disclosure described in subdivision (1) to any person who is the subject of the disclosure.

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(f) Beginning in 2009, the report provided by the mortgage lending and fraud prevention task force to the legislative council under P.L.145-2008, SECTION 35, must include the following information:

(1) The total number of complaints or reports:

(A) received by the homeowner protection unit during the most recent state fiscal year; and

(B) concerning a suspected violation of section 8 of this chapter.

(2) From the total number of complaints or reports reported under subdivision (1), a breakdown of the sources of the complaints or reports, classified according to the complainants' interest in or relationship to the real estate transactions upon which the complaints or reports are based.

(3) A description of any:

(A) disciplinary or enforcement actions taken; or

(B) criminal prosecutions pursued;

by the homeowner protection unit or any entity listed in IC 4-6-12-4 and having jurisdiction in the matter, as applicable, in connection with the complaints or reports reported under subdivision (1).

The homeowner protection unit shall make available to the mortgage lending and fraud prevention task force any information necessary to provide the information required under this subsection in the task force's report to the legislative council.

Sec. 10. (a) A person that knowingly or intentionally violates section 8 of this chapter commits:

(1) a Class A misdemeanor; and

(2) an act that is:

(A) actionable by the attorney general under IC 24-5-0.5; and

(B) subject to the penalties listed in IC 24-5-0.5.

(b) The attorney general may maintain an action in the name of the state of Indiana to enjoin a person from violating section 8 of this chapter. A court in which the action is brought may:

(1) issue an injunction;

(2) order the person to make restitution;

(3) order the person to reimburse the state for the attorney general's reasonable costs of investigating and prosecuting the violation; and

(4) impose a civil penalty of not more than ten thousand dollars (\$10,000) per violation.

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(c) A person that violates an injunction issued under this section is subject to a civil penalty of not more than ten thousand dollars (\$10,000) per violation. The court that issues the injunction retains jurisdiction over a proceeding seeking the imposition of a civil penalty under this subsection.

(d) A civil penalty imposed and collected under this section shall be deposited in the investigative fund established by IC 25-34.1-8-7.5.

(e) The enforcement procedures established by this section are cumulative and an enforcement procedure available under this section is supplemental to any other enforcement procedure available under:

(1) this section; or

(2) any other state or federal law, rule, or regulation; for a violation of section 8 of this chapter.

SECTION 8. IC 24-5.5-5-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7. A foreclosure consultant shall retain all records and documents, including the foreclosure consultant contract, related to services performed on behalf of a homeowner for at least three (3) years after the termination or conclusion of the foreclosure consultant contract entered into by the foreclosure consultant and the homeowner.**

SECTION 9. IC 24-9-1-1, AS AMENDED BY P.L.181-2006, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1. Except for ~~IC 24-9-3-7(3)~~ IC 24-9-3-7(c)(3) and IC 24-9-3-7(c)(4), this article does not apply to:**

(1) a loan made or acquired by a person organized or chartered under the laws of this state, any other state, or the United States relating to banks, trust companies, savings associations, savings banks, credit unions, or industrial loan and investment companies; or

(2) a loan:

(A) that can be purchased by the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the Federal Home Loan Bank;

(B) to be insured by the United States Department of Housing and Urban Development;

(C) to be guaranteed by the United States Department of Veterans Affairs;

(D) to be made or guaranteed by the United States Department of Agriculture Rural Housing Service;

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(E) to be funded by the Indiana housing and community development authority; or

(F) with a principal amount that exceeds the conforming loan size limit for a single family dwelling as established by the Federal National Mortgage Association.

SECTION 10. IC 24-9-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) Except as provided in subsection (b), "points and fees" means the total of the following:

(1) Points and fees (as defined in 12 CFR 226.32(b)(1) on January 1, 2004).

(2) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in the broker's own name.

As used in subdivision (2), "compensation" does not include a payment included in subdivision (1).

(b) The term does not include the following:

(1) Bona fide discount points.

(2) An amount not to exceed one and one-half (1 1/2) points in indirect broker compensation, if the terms of the loan do not include:

**(A) a prepayment penalty, in the case of a home loan described in IC 24-9-3-6(b); or**

**(B) a prepayment penalty that exceeds two percent (2%) of the home loan ~~principle~~, principal, in the case of a home loan other than a home loan described in IC 24-9-3-6(b).**

(3) Reasonable fees paid to an affiliate of the creditor.

(4) Interest prepaid by the borrower for the month in which the home loan is closed.

SECTION 11. IC 24-9-3-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1.1. (a) Subject to subsection (b):

**(1) a creditor; or**

**(2) any other person that participates in or is involved in a home loan transaction, other than a person described in IC 27-7-3-15.5(b);**

**shall not recommend or make to, or procure on behalf of, a borrower a home loan without grounds to believe that the borrower has the ability to repay the home loan based on factors that are reasonable to take into account, as determined by the department of financial institutions, the securities commissioner, or the homeowner protection unit established by the attorney**

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1 general under IC 4-6-12, as appropriate.

2 (b) Subsection (a) does not create any right of action, claim, set  
3 off, or recoupment of any kind in favor of a borrower or any other  
4 party other than the department of financial institutions, the  
5 securities commissioner, or the homeowner protection unit  
6 established by the attorney general under IC 4-6-12, as  
7 appropriate. However, this subsection does not limit the liability of  
8 any party under IC 24-9-3-7.

9 SECTION 12. IC 24-9-3-6, AS AMENDED BY P.L.145-2008,  
10 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11 JULY 1, 2009]: Sec. 6. (a) A creditor may not charge a fee for  
12 informing or transmitting to a person the balance due to pay off a home  
13 loan or to provide a written release upon prepayment. A creditor must  
14 provide a payoff balance not later than ten (10) calendar days after the  
15 request is received by the creditor. For purposes of this subsection,  
16 "fee" does not include actual charges incurred by a creditor for express  
17 or priority delivery of home loan documents to the borrower if such  
18 delivery is requested by the borrower.

19 (b) This subsection applies to a home loan, or the refinancing or  
20 consolidation of a home loan, that:

21 (1) is closed after June 30, 2009; and

22 (2) has an interest rate that is subject to change at one (1) or  
23 more times during the term of the home loan.

24 A creditor in a transaction to which this subsection applies may not  
25 contract for and may not charge the borrower a prepayment fee or  
26 penalty.

27 ~~(b)~~ (c) This subsection applies to a home loan with respect to which  
28 any installment or minimum payment due is delinquent for at least  
29 sixty (60) days. The creditor, servicer, or the creditor's agent shall  
30 acknowledge a written offer made in connection with a proposed short  
31 sale not later than ten (10) business days after the date of the offer if  
32 the offer complies with the requirements for a qualified written request  
33 set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's  
34 agent is required to acknowledge a written offer made in connection  
35 with a proposed short sale from a third party acting on behalf of the  
36 debtor only if the debtor has provided written authorization for the  
37 creditor, servicer, or creditor's agent to do so. Not later than thirty (30)  
38 business days after receipt of an offer under this subsection, the  
39 creditor, servicer, or creditor's agent shall respond to the offer with an  
40 acceptance or a rejection of the offer. As used in this subsection, "short  
41 sale" means a transaction in which the property that is the subject of a  
42 home loan is sold for an amount that is less than the amount of the

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borrower's outstanding obligation on the home loan. A creditor, a servicer, or a creditor's agent that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 13. IC 24-9-3-7, AS AMENDED BY P.L.141-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) As used in this section, "mortgage transaction" includes the following:

(1) A home loan subject to this article.

(2) A loan described in IC 24-9-1-1.

(3) A first lien mortgage transaction (as defined in IC 24-4.4-1-301) subject to IC 24-4.4.

(4) A consumer credit sale subject to IC 24-4.5-2 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(5) A consumer credit loan subject to IC 24-4.5-3 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(6) A loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land:

(A) that is located in Indiana;

(B) upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and

(C) that is classified as residential for property tax purposes.

The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes.

(b) As used in this section, "real estate transaction" means the sale or lease of any legal or equitable interest in real estate:

(1) that is located in Indiana;

(2) upon which there is a dwelling; and

(3) that is classified as residential for property tax purposes.

(c) A person may not:

(1) divide a loan transaction into separate parts with the intent of evading a provision of this article;

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(2) structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the loan would be a high cost home loan if the home loan had been structured as a closed-end loan; or

(3) engage in, a ~~deceptive act in connection with a:~~ (A) home loan; or (B) loan described in IC 24-9-1-1, or solicit to engage in, a real estate transaction or a mortgage transaction without a permit or license required by law; or

(4) with respect to a real estate transaction or a mortgage transaction, represent that:

(A) the transaction has the sponsorship or approval of a particular person or entity that it does not have and that the person knows or reasonably should know it does not have; or

(B) the real estate or property that is the subject of the transaction has any improvements, appurtenances, uses, characteristics, or associated benefits that it does not have and that the person knows or reasonably should know it does not have.

SECTION 14. IC 24-9-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. A person seeking to enforce section ~~7(3)~~ **7(c)(3) or 7(c)(4)** of this chapter may not knowingly or intentionally intimidate, coerce, or harass another person.

SECTION 15. IC 24-9-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The following additional limitations and prohibited practices apply to a high cost home loan:

(1) A creditor making a high cost home loan may not directly or indirectly finance any points and fees.

(2) **This subdivision does not apply to a high cost home loan described in IC 24-9-3-6(b).** Prepayment fees or penalties may not be included in the loan documents for a high cost home loan or charged to the borrower if the fees or penalties exceed in total two percent (2%) of the high cost home loan amount prepaid during the first twenty-four (24) months after the high cost home loan closing.

(3) **This subdivision does not apply to a high cost home loan described in IC 24-9-3-6(b).** A prepayment penalty may not be contracted for after the second year following the high cost home loan closing.

(4) **This subdivision does not apply to a high cost home loan described in IC 24-9-3-6(b).** A creditor may not include a

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prepayment penalty fee in a high cost home loan unless the creditor offers the borrower the option of choosing a loan product without a prepayment fee. The terms of the offer must be made in writing and must be initialed by the borrower. The document containing the offer must be clearly labeled in large bold type and must include the following disclosure:

"LOAN PRODUCT CHOICE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."

(5) A creditor shall not sell or otherwise assign a high cost home loan without furnishing the following statement to the purchaser or assignee:

"NOTICE: This is a loan subject to special rules under IC 24-9. Purchasers or assignees may be liable for all claims and defenses with respect to the loan that the borrower could assert against the lender."

(6) A mortgage or deed of trust that secures a high cost home loan at the time the mortgage or deed of trust is recorded must prominently display the following on the face of the instrument:

"This instrument secures a high cost home loan as defined in IC 24-9-2-8."

(7) A creditor making a high cost home loan may not finance, directly or indirectly, any life or health insurance.

SECTION 16. IC 24-9-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) A creditor may not make a high cost home loan without regard to repayment ability, **as required under IC 24-9-3-1.1.**

(b) If a creditor presents evidence that the creditor:

(1) followed commercially reasonable practices in determining the borrower's debt to income ratio; **and**

**(2) had grounds to believe that the borrower had the ability to repay the home loan as required under IC 24-9-3-1.1;**

there is a rebuttable presumption that the creditor made the high cost home loan with due regard to repayment ability. ~~For purposes of this section, there is a rebuttable presumption that the borrower's statement of income provided to the creditor is true and complete.~~

(c) **For purposes of subsection (b)(1),** commercially reasonable practices include the use of:

(1) the debt to income ratio:

(A) listed in 38 CFR 36.4337(c)(1); and

(B) defined in 38 CFR 36.4337(d); and

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(2) the residual income guidelines established under:

(A) 38 CFR 36.4337(e); and

(B) United States Department of Veterans Affairs form 26-6393.

SECTION 17. IC 24-9-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 4.5. Residential Real Estate Closings**

**Sec. 1. This chapter applies to a home loan closing that takes place after December 31, 2009.**

**Sec. 2. As used in this chapter, "borrower" includes a prospective borrower.**

**Sec. 3. As used in this chapter, "business day" means a day on which the offices of a business entity are open to the public for carrying on substantially all of the entity's business functions.**

**Sec. 4. As used in this section, "closing agent" has the meaning set forth in IC 6-1.1-12-43(a)(2).**

**Sec. 5. As used in this section, "closing documents" means the HUD-1 or HUD-1A settlement statement required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.**

**Sec. 6. (a) As used in this section, "creditor" means a person:**

**(1) who regularly extends home loans that are subject to a finance charge or that are payable by written agreement in more than four (4) installments; and**

**(2) to whom the debt arising from a home loan transaction is initially payable on the face of the evidence of indebtedness or, if there is no evidence of indebtedness, by agreement.**

**(b) The term includes a mortgage broker in any home loan transaction in which the mortgage broker is required or allowed to provide the good faith estimates required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.**

**Sec. 7. (a) Not later than October 1, 2009, the homeowner protection unit established by the attorney general under IC 4-6-12 shall prescribe a form that:**

**(1) shall be used by creditors under subsection (b); and**

**(2) informs a borrower of the borrower's rights under section 8 of this chapter.**

**(b) A creditor that seeks to issue a home loan in Indiana after December 31, 2009, shall provide the notice described in subsection (a) to the borrower at the same time that the creditor provides the**

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1 good faith estimates required under the federal Real Estate  
2 Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

3 Sec. 8. (a) Subject to subsection (c), a closing agent in a home  
4 loan transaction shall permit the borrower to inspect the closing  
5 documents, completed to set forth those items that are known to  
6 the closing agent at the time of inspection, not later than one (1)  
7 business day before the closing of the home loan. In the case of a  
8 purchase money home loan, items related only to the seller's  
9 transaction may be omitted from the closing documents.

10 (b) The closing agent shall make the closing documents available  
11 to the borrower for inspection under subsection (a):

- 12 (1) at the office of the creditor or the closing agent;
- 13 (2) through the United States mail;
- 14 (3) by facsimile; or
- 15 (4) through any other commercially reasonable means.

16 (c) A borrower may waive the right under subsection (a) to  
17 inspect the closing documents with respect to a home loan by  
18 providing a written notice of waiver to the closing agent at or  
19 before the time of closing.

20 (d) If:

- 21 (1) the borrower requests to inspect the closing documents
- 22 under subsection (a); and
- 23 (2) either:
  - 24 (A) the closing agent does not permit the borrower to
  - 25 inspect the closing documents within the time specified in
  - 26 subsection (a) or in the manner specified in subsection (b);
  - 27 or
  - 28 (B) any items required to be set forth in the closing
  - 29 documents are incomplete at the time of the borrower's
  - 30 inspection;

31 the borrower is entitled to delay or reschedule the closing without  
32 penalty and without forfeiting the right to enter into the home loan  
33 or, in the case of a purchase money home loan, into the purchase  
34 contract. A borrower that exercises the right to delay or reschedule  
35 a closing under this subsection must offer to reschedule the closing  
36 for a date that is not later than three (3) business days after the  
37 date of the closing that the borrower seeks to reschedule, subject  
38 to the availability of the other parties to the transaction.

39 (e) Subject to subsections (f), (g), and (h) and section 9 of this  
40 chapter, if the terms of the home loan set forth in the closing  
41 documents inspected by the borrower under subsection (a) differ  
42 from the terms of the home loan presented to the borrower at the

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time of the closing, the borrower is entitled to:

(1) delay or reschedule the closing without penalty and without forfeiting the right to enter into the home loan or, in the case of a purchase money home loan, into the purchase contract; and

(2) if the creditor does not conform the terms of the home loan to the terms set forth in the closing documents inspected by the borrower under subsection (a), bring an action against the creditor (or against any subsequent holder or assignee of the home loan if the home loan proceeds to closing) for:

(A) actual damages, including:

(i) consequential damages; and

(ii) if the home loan does not proceed to closing, any damages suffered by the borrower as a result of not entering into the home loan or into the purchase contract;

(B) if the home loan proceeds to closing, statutory damages equal to two (2) times the difference between:

(i) the finance charge (as described in 15 U.S.C. 1638(a)) that would result from the maximum interest rate set forth in the actual loan documents; minus

(ii) the finance charge (as described in 15 U.S.C. 1638(a)) that would result from the maximum interest rate set forth in the closing documents inspected by the borrower under subsection (a);

if the finance charge set forth in the actual loan documents is greater than finance charge set forth in the closing documents inspected by the borrower under subsection (a);

(C) reasonable costs and attorney's fees; and

(D) injunctive, declaratory, and other equitable relief as the court determines appropriate.

A borrower that exercises the right to delay or reschedule a closing under subdivision (1) must offer to reschedule the closing for a date that is not later than three (3) business days after the date of the closing that the borrower seeks to reschedule, subject to the availability of the other parties to the transaction.

(f) For purposes of subsection (e), "terms", with respect to a home loan, means any terms identified as loan terms in the HUD-1 or HUD-1A settlement statement required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

(g) For purposes of subsection (e), a term set forth in the closing

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documents presented to the borrower at the time of the closing is not considered to differ from the same term set forth in the closing documents inspected by the borrower under subsection (a) if the difference between the two (2) terms:

(1) is within any applicable tolerance for accuracy prescribed in the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended; or

(2) is the result of the expiration of an interest rate lock-in period, or other interest rate guarantee, between the time of the borrower's inspection of the documents under subsection (a) and the time of the closing, if the term at issue is the interest rate applicable to the home loan.

(h) An action under subsection (e)(2) must be brought not later than five (5) years after:

(1) the closing of the home loan, if the home loan proceeds to closing; or

(2) the date of the first scheduled closing with respect to the home loan, if the home loan does not proceed to closing.

Sec. 9. (a) In addition to the remedies available to the borrower under section 8(e) of this chapter, if the terms of a home loan set forth in the closing documents inspected by a borrower under section 8(a) of this chapter differ from the terms of the home loan presented to the borrower at the time of the closing, the attorney general, acting through the attorney general's homeowner protection unit established under IC 4-6-12, may, upon the attorney general's own motion or upon receiving a complaint from the borrower or any other person involved in the closing, investigate the circumstances surrounding the home loan to determine:

(1) the reasons for the discrepancy between the terms of the home loan set forth in the closing documents inspected by the borrower under section 8(a) of this chapter and the terms of the home loan presented to the borrower at the time of closing;

(2) whether there was an attempt by the creditor to deceive or defraud the borrower by presenting different terms at the time of the closing;

(3) whether the creditor involved in the closing has engaged in a pattern or practice of presenting loan terms at the time of closing that differ from the loan terms set forth in closing documents inspected by borrowers before scheduled closings under section 8(a) of this chapter; and

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(4) whether the creditor's actions in the case being investigated constitute a violation of:

(A) the federal Truth in Lending Act (15 U.S.C. 1601 et seq.);

(B) the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended; or

(C) any other federal laws or regulations concerning mortgage lending;

as authorized by IC 4-6-12-3. In conducting an investigation under this section, the attorney general may cooperate with any entity described in IC 4-6-12-4 that may have jurisdiction in the matter, as authorized by IC 4-6-12-5.

(b) Subject to subsection (d), if, after an investigation conducted under subsection (a) the attorney general determines that:

(1) there was an attempt by the creditor to deceive or defraud the borrower by presenting different terms at the time of the closing; or

(2) the creditor involved in the closing has engaged in a pattern or practice of presenting loan terms at the time of closing that differ from the loan terms set forth in closing documents inspected by borrowers before scheduled closings under section 8(a) of this chapter;

the attorney general may pursue any enforcement action or penalty available under IC 24-9-8 for a violation of this article, including bringing an action under IC 24-5-0.5, as authorized by IC 24-9-8-1. In addition, the attorney general may file a complaint with any entity described in IC 4-6-12-4 that may have jurisdiction over the matter, as authorized by IC 4-6-12-5.

(c) If, after an investigation conducted under subsection (a), the attorney general determines that the creditor has violated:

(1) the federal Truth in Lending Act (15 U.S.C. 1601 et seq.);

(2) the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended; or

(3) any other federal laws or regulations concerning mortgage lending;

the attorney general may, to the extent authorized by federal law, enforce compliance with the federal statutes or regulations described in this subsection or refer the suspected violation to the appropriate federal regulatory agencies, as authorized by IC 4-6-12-3.

(d) Any action by the attorney general under this section must be brought not later than five (5) years after:

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- 1 (1) the closing of the home loan that prompted the  
 2 investigation, if the home loan proceeded to closing; or  
 3 (2) the date of the first scheduled closing with respect to the  
 4 home loan that prompted the investigation, if the home loan  
 5 did not proceed to closing.

6 **Sec. 10. (a) If a closing agent knowingly or willfully fails to**  
 7 **permit a borrower in a home loan transaction to inspect the closing**  
 8 **documents with respect to the home loan:**

- 9 (1) within the time specified in section 8(a) of this chapter; or  
 10 (2) in the manner specified in section 8(b) of this chapter;  
 11 the closing agent is subject to a civil penalty of twenty-five dollars  
 12 (\$25), unless the borrower has waived the borrower's right to  
 13 inspect the closing documents under section 8(c) of this chapter.

14 (b) A penalty described in subsection (a):

- 15 (1) may be enforced by the state agency that has  
 16 administrative jurisdiction over the closing agent in the same  
 17 manner that the agency enforces the payment of fees or other  
 18 penalties payable to the agency; and  
 19 (2) shall be paid into the home ownership education account  
 20 established by IC 5-20-1-27.

21 (c) A closing agent is not liable for any other damages claimed  
 22 by a customer because of the closing agent's failure to comply with  
 23 this chapter.

24 SECTION 18. IC 24-9-5-1, AS AMENDED BY P.L.141-2005,  
 25 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 26 JULY 1, 2009]: Sec. 1. (a) A person who purchases or is otherwise  
 27 assigned a high cost home loan is subject to all affirmative claims and  
 28 any defenses, except for an affirmative claim or defense pursuant to  
 29 IC 24-9-3-7, with respect to the high cost home loan that the borrower  
 30 could assert against a creditor or broker of the high cost home loan.  
 31 However, this section does not apply if the purchaser or assignee  
 32 demonstrates by a preponderance of the evidence that a reasonable  
 33 person exercising ordinary due diligence could not determine that the  
 34 loan was a high cost home loan. A purchaser or an assignee is  
 35 presumed to have exercised reasonable due diligence if the purchaser  
 36 or assignee:

- 37 (1) has in place at the time of the purchase or assignment of the  
 38 subject loans, policies that expressly prohibit the purchase or  
 39 acceptance of the assignment of any high cost home loans;  
 40 (2) requires by contract that a seller or an assignor of home loans  
 41 to the purchaser or assignee represents and warrants to the  
 42 purchaser or assignee that either:

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(A) the seller or assignor will not sell or reassign any high cost home loans to the purchaser or assignee; or

(B) the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect;

(3) exercises reasonable due diligence:

(A) at the time of purchase or assignment of home loans; or

(B) within a reasonable period after the purchase or assignment of home loans;

intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high cost home loans; or

(4) satisfies the requirements of subdivisions (1) and (2) and establishes that a reasonable person exercising ordinary due diligence could not determine that the loan was a high cost home loan based on the:

(A) documentation required by the federal Truth in Lending Act (15 U.S.C. 1601 et seq.); and

(B) itemization of the amount financed and other disbursement disclosures.

(b) **Except as provided in IC 24-9-3-1.1(b)**, a borrower acting only in an individual capacity may assert against the creditor or any subsequent holder or assignee of a high cost home loan:

(1) a violation of IC 24-9-4-2 as a defense, claim, or counterclaim, after:

(A) an action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan is initiated;

(B) an action to collect on the loan or foreclose on the collateral securing the loan is initiated; or

(C) the loan is more than sixty (60) days in default; within three (3) years after the closing of a home loan;

(2) a violation of this article in connection to the high cost home loan as a defense, claim, or counterclaim in an original action within five (5) years after the closing of a high cost home loan; and

(3) any defense, claim, counterclaim, or action to enjoin foreclosure or preserve or obtain possession of the home that secures the loan, including a violation of this article after:

(A) an action to collect on the loan or foreclose on the collateral securing the loan is initiated;

(B) the debt arising from the loan is accelerated; or

(C) the loan is more than sixty (60) days in default; at any time during the term of a high cost home loan.

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(c) In an action, a claim, or a counterclaim brought under subsection (b), the borrower may recover only amounts required to reduce or extinguish the borrower's liability under a home loan plus amounts required to recover costs, including reasonable attorney's fees.

(d) The provisions of this section are effective notwithstanding any other provision of law. This section shall not be construed to limit the substantive rights, remedies, or procedural rights available to a borrower against any creditor, assignee, or holder under any other law. The rights conferred on borrowers by subsections (a) and (b) are independent of each other and do not limit each other.

SECTION 19. IC 24-9-5-4, AS AMENDED BY P.L.3-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. **(a) This section does not apply to a violation or an alleged violation of IC 24-9-3-1.1(a).**

~~(a)~~ **(b)** A person who violates this article is liable to a person who is a party to the home loan transaction that gave rise to the violation for the following:

(1) Actual damages, including consequential damages. A person is not required to demonstrate reliance in order to receive actual damages.

(2) Statutory damages equal to two (2) times the finance charges agreed to in the home loan agreement.

(3) Costs and reasonable attorney's fees.

~~(b)~~ **(c)** A person may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

~~(c)~~ **(d)** The right of rescission granted under 15 U.S.C. 1601 et seq. for a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) is available to a person acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a home loan at any time during the term of the loan. Any recoupment claim asserted under this provision is limited to the amount required to reduce or extinguish the person's liability under the home loan plus amounts required to recover costs, including reasonable attorney's fees. This article shall not be construed to limit the recoupment rights available to a person under any other law.

~~(d)~~ **(e)** The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a person. Except as provided in subsection ~~(c)~~; **(f)**, a person is not required to exhaust any administrative remedies under this article or under any other applicable law.

~~(e)~~ **(f)** Before bringing an action regarding an alleged deceptive act

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under this chapter, a person must:

- (1) notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action; and
- (2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress a violation.

(f) (g) An action under this chapter must be brought within five (5) years after the date that the person knew, or by the exercise of reasonable diligence should have known, of the violation of this article.

(g) (h) An award of damages under subsection (a) (b) has priority over a civil penalty imposed under this article.

SECTION 20. IC 25-1-11-18, AS AMENDED BY P.L.194-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to disciplinary sanctions may be required by a board to pay the costs of the proceeding. The practitioner's ability to pay shall be considered when costs are assessed. If the practitioner fails to pay the costs, a suspension may not be imposed solely upon the practitioner's inability to pay the amount assessed. These costs are limited to costs for the following:

- (1) Court reporters.
- (2) Transcripts.
- (3) Certification of documents.
- (4) Photo duplication.
- (5) Witness attendance and mileage fees.
- (6) Postage.
- (7) Expert witnesses.
- (8) Depositions.
- (9) Notarizations.
- (10) Administrative law judges.

**(11) Real estate review appraisals, if applicable.**

SECTION 21. IC 25-34.1-6-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.5. (a) A violation of:

- (1) IC 24-5-15; or
- (2) IC 24-5.5;

by a person licensed or required to be licensed under this article is a violation of this article.

(b) A person who commits a violation described in subsection (a) commits a Class A infraction and is subject to:

- (1) the enforcement procedures described in section 2 of this chapter; and

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**(2) any sanction that may be imposed by the commission under IC 25-1-11-12 for an act described in IC 25-1-11-11.**

SECTION 22. IC 25-34.1-8-7.5, AS AMENDED BY P.L.57-2007, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7.5. (a) The investigative fund is established to provide funds for administering and enforcing the provisions of this article, including investigating and taking enforcement action against real estate fraud and real estate appraisal fraud. The fund shall be administered by the attorney general and the professional licensing agency.

(b) The expenses of administering the fund shall be paid from the money in the fund. The fund consists of:

**(1) money from a fee imposed upon licensed or certified appraisers and real estate brokers and salespersons under IC 25-34.1-2-7 and IC 25-34.1-3-9.5; and**

**(2) civil penalties deposited in the fund under IC 24-5-23.5-10(d).**

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) Except as otherwise provided in this subsection, money in the fund at the end of a state fiscal year does not revert to the state general fund. If the total amount in the investigative fund exceeds seven hundred fifty thousand dollars (\$750,000) at the end of a state fiscal year after payment of all claims and expenses, the amount that exceeds seven hundred fifty thousand dollars (\$750,000) reverts to the state general fund.

(e) Money in the fund is continually appropriated for use by the attorney general and the licensing agency to administer and enforce the provisions of this article and to conduct investigations and take enforcement action against real estate and appraisal fraud under this article. The attorney general shall receive five dollars (\$5) of each fee collected under IC 25-34.1-2-7 and IC 25-34.1-3-9.5, and the licensing agency shall receive any amount that exceeds five dollars (\$5) of each fee collected under IC 25-34.1-2-7 and IC 25-34.1-3-9.5.

SECTION 23. IC 34-30-2-89.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 89.5. IC 23-2-5-15 (Concerning a person licensed, required to be licensed, registered, or required to be registered under IC 23-2-5 that:**

**(1) recommends a first lien mortgage transaction to a creditor; or**

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1           (2) recommends a first lien mortgage transaction to, or  
 2           procures a first lien mortgage transaction on behalf of, a  
 3           borrower).

4           SECTION 24. IC 34-30-2-96.4 IS ADDED TO THE INDIANA  
 5           CODE AS A NEW SECTION TO READ AS FOLLOWS  
 6           [EFFECTIVE JULY 1, 2009]: **Sec. 96.4. IC 24-4.4-3-113 (Concerning**  
 7           **a creditor that recommends or makes a first lien mortgage**  
 8           **transaction to a debtor).**

9           SECTION 25. IC 34-30-2-96.6 IS ADDED TO THE INDIANA  
 10          CODE AS A NEW SECTION TO READ AS FOLLOWS  
 11          [EFFECTIVE UPON PASSAGE]: **Sec. 96.6. IC 24-9-4.5-10(c)**  
 12          **(Concerning a closing agent's failure to permit a borrower in a**  
 13          **home loan transaction to inspect the closing documents in the**  
 14          **transaction not later than one (1) business day before the closing**  
 15          **of the home loan).**

16          SECTION 26. IC 34-30-2-96.7 IS ADDED TO THE INDIANA  
 17          CODE AS A NEW SECTION TO READ AS FOLLOWS  
 18          [EFFECTIVE JULY 1, 2008]: **Sec. 96.7. IC 24-9-5-1(b) (Concerning**  
 19          **a creditor or other person that recommends or makes to, or**  
 20          **procures on behalf of, a borrower a home loan).**

21          SECTION 27. IC 34-30-2-96.8 IS ADDED TO THE INDIANA  
 22          CODE AS A NEW SECTION TO READ AS FOLLOWS  
 23          [EFFECTIVE JULY 1, 2009]: **Sec. 96.8. IC 24-9-5-4(a) (Concerning**  
 24          **a creditor or other person that recommends or makes to, or**  
 25          **procures on behalf of, a borrower a home loan).**

26          SECTION 28. An emergency is declared for this act.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1176, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1176 as introduced.)

BARDON, Chair

Committee Vote: yeas 11, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1176 be amended to read as follows:

Page 1, line 12, delete "IC 24-9-4.5-9(b)." and insert "IC 24-9-4.5-10(b).".

Page 2, line 6, delete "This" and insert "**Except as provided in section 20(c) of this chapter, this**".

Page 2, line 7, delete "20(f)(9)" and insert "**20(b)**".

Page 2, line 19, delete ""ability to" and insert ""**first lien mortgage transaction**" has the meaning set forth in IC 24-4.4-1-301(6).".

Page 2, delete lines 20 through 42.

Page 3, delete lines 1 through 39, begin a new paragraph and insert:

**"(b) Subject to subsection (c), a person licensed, required to be licensed, registered, or required to be registered under this chapter shall not:**

**(1) recommend a first lien mortgage transaction to a creditor;**

**or**

**(2) recommend a first lien mortgage transaction to, or procure a first lien mortgage transaction on behalf of, a borrower;**

**without grounds to believe that the borrower has the ability to repay the first lien mortgage transaction based on factors that are reasonable to take into account, as determined by the commissioner.**

**(c) Subsection (b) may be enforced by a creditor to whom a first**

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lien mortgage transaction is recommended by a person licensed, required to be licensed, registered, or required to be registered under this chapter. However, subsection (b) does not create any right of action, claim, set off, or recoupment of any kind in favor of a borrower or any other party other than:

- (1) a creditor to whom a first lien mortgage transaction is recommended; and
- (2) the commissioner.

However, this subsection does not limit the liability of any party under IC 24-9-3-7."

Page 3, line 40, delete "(f)" and insert "(d)".

Page 5, delete lines 3 through 6.

Page 5, line 7, delete "(g)" and insert "(e)".

Page 5, line 7, delete "A" and insert "**Subject to subsection (c), a**".

Page 5, line 7, delete "(f)" and insert "**(d) or violates subsection (b)**".

Page 6, line 23, delete "As used in this section," and insert "**Subject to subsection (2), a creditor shall not recommend or make a first lien mortgage transaction to a debtor without grounds to believe that the debtor has the ability to repay the first lien mortgage transaction based on factors that are reasonable to take into account, as determined by the department.**

(2) Subsection (1) does not create any right of action, claim, set off, or recoupment of any kind in favor of a debtor or any other party other than the department. However, this subsection does not limit the liability of any party under IC 24-9-3-7."

Page 6, delete lines 24 through 42.

Delete page 7.

Page 8, delete lines 1 through 9.

Page 8, line 12, delete "The" and insert "**Except as provided in IC 24-4.4-201.5(2), the**".

Page 8, line 14, delete "However, a creditor".

Page 8, delete lines 15 through 20.

Page 8, line 41, after "engages" insert "**in Indiana**".

Page 9, delete lines 12 through 31.

Page 9, line 32, delete "5." and insert "**4.**".

Page 10, line 9, delete "land in" and insert "**land:**

(A) that is located in Indiana;

(B) upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and

(C) that is classified as residential for property tax

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**purposes.**

**The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes."**

Page 10, delete lines 10 through 15.

Page 10, line 16, delete "6." and insert "5."

Page 10, line 22, delete "7." and insert "6."

Page 10, line 26, delete "issuance," and insert "**making**,"

Page 10, line 28, delete "8." and insert "7."

Page 10, line 34, delete "Sec. 9. (a) An interested person in a real estate transaction" and insert "**Sec. 8. A person**".

Page 10, line 35, delete "influence or attempt to influence:" and insert "**corrupt or improperly influence, or attempt to corrupt or improperly influence:**".

Page 10, line 37, delete "subject of the" and insert "**subject of a real estate**".

Page 10, line 40, delete "the" and insert "**a real estate**".

Delete page 11.

Page 12, delete lines 1 through 7.

Page 12, line 8, delete "10." and insert "9."

Page 12, line 8, delete "to a creditor that issues" and insert "**with respect to a completed application for a mortgage loan that is received by a creditor after December 31, 2009**".

Page 12, delete line 9.

Page 12, line 10, delete "this subsection applies" and insert "**A creditor**".

Page 12, line 11, after "receiving a" insert "**completed**".

Page 12, line 13, delete "notice" insert "**notice, on a form prescribed by the homeowner protection unit under subsection (b)**".

Page 12, line 22, delete "report an" and insert "**report:**

**(A) a suspected violation of section 8 of this chapter; or**

**(B) other information about suspected fraudulent residential real estate transactions, as authorized by IC 4-6-12-3.5(b).**

Page 12, delete lines 23 through 26.

Page 12, between lines 30 and 31, begin a new paragraph and insert:

**"(b) Not later than September 1, 2009, the home owner protection unit established by the attorney general under IC 4-6-12 shall prescribe the form required under subsection (a) for use by creditors who receive completed written applications for mortgage**

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loans after December 31, 2009.

(c) The homeowner protection unit established by the attorney general under IC 4-6-12, in cooperation with the real estate appraiser licensure and certification board created by IC 25-34.1-8-1, shall publicize and promote awareness of the availability of the:

- (1) electronic mail address; and
- (2) toll free telephone number;

described in subsection (a)(1) to accept complaints from real estate appraisers, creditors, borrowers, potential borrowers, and other persons concerning suspected violations of section 8 of this chapter.

(d) A creditor may share any information obtained concerning a suspected violation of section 8 of this chapter with the homeowner protection unit established by the attorney general under IC 4-6-12. The homeowner protection unit may, in turn, share any information received from a creditor under this subsection with the following:

- (1) Federal, state, and local law enforcement agencies and federal regulatory agencies in accordance with IC 4-6-12-3(a)(4).
- (2) Any entity listed in IC 4-6-12-4 that may have jurisdiction over any person who is suspected of violating section 8 of this chapter, including any entity that may have jurisdiction over the creditor or an agent of the creditor if the homeowner protection unit suspects that the creditor or an agent of the creditor has violated section 8 of this chapter. However, the homeowner protection unit and any entity listed in IC 4-6-12-4 that receives information under this subdivision shall treat the information, including information concerning the identity of the complainant, as confidential and shall exercise all necessary caution to avoid disclosure of the information, except as otherwise permitted or required by law.

(e) A:

- (1) real estate appraiser, creditor, borrower, potential borrower, or other person that makes, in good faith, a voluntarily disclosure of a suspected violation of section 8 of this chapter to the homeowner protection unit under this section or otherwise; and
- (2) director, officer, manager, employee, or agent of a person described in subdivision (1) who makes, or requires another person to make, a disclosure described in subdivision (1);

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is not liable to any person under any law or regulation of the United States, under any constitution, law, or regulation of any state or a political subdivision of any state, or under any contract or other legally enforceable agreement, including an arbitration agreement, for a disclosure described in subdivision (1) or for failing to provide notice of a disclosure described in subdivision (1) to any person who is the subject of the disclosure."

Page 12, line 31, delete "(c)" and insert "(f)".

Page 12, line 38, delete "an attempt or action taken, or suspected to" and insert **"a suspected violation of section 8 of this chapter."**

Page 12, delete lines 39 through 41.

Page 13, line 16, delete "11." and insert **"10."**

Page 13, line 17, delete "9" and insert **"8"**.

Page 13, delete lines 23 through 27.

Page 13, line 28, delete "or the prosecuting attorney of any".

Page 13, line 29, delete "county in which a violation occurs".

Page 13, line 30, after "violating" insert **"section 8 of"**.

Page 13, line 33, delete "restitution to a party aggrieved" and insert **"restitution;"**.

Page 13, delete line 34.

Page 13, line 35, delete "attorney general or a".

Page 13, line 36, delete "prosecuting attorney for the" and insert **"state for the attorney general's reasonable"**.

Page 14, line 12, after "of" insert **"section 8 of"**.

Page 14, delete lines 13 through 42.

Page 15, delete lines 1 through 7.

Page 16, line 24, delete "As used in this section, "ability to repay"," and insert **"Subject to subsection (b):"**

**(1) a creditor; or**

**(2) any other person that participates in or is involved in a home loan transaction, other than a person described in IC 27-7-3-15.5(b);**

shall not recommend or make to, or procure on behalf of, a borrower a home loan without grounds to believe that the borrower has the ability to repay the home loan based on factors that are reasonable to take into account, as determined by the department of financial institutions, the securities commissioner, or the homeowner protection unit established by the attorney general under IC 4-6-12, as appropriate.

**(b) Subsection (a) does not create any right of action, claim, set off, or recoupment of any kind in favor of a borrower or any other party other than the department of financial institutions, the**

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securities commissioner, or the homeowner protection unit established by the attorney general under IC 4-6-12, as appropriate. However, this subsection does not limit the liability of any party under IC 24-9-3-7."

Page 16, delete lines 25 through 42.

Page 17, delete lines 1 through 33.

Page 19, line 7, delete "land in" and insert "land:

(A) that is located in Indiana;

(B) upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and

(C) that is classified as residential for property tax purposes.

The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes."

Page 19, delete lines 8 through 13.

Page 21, line 11, delete "that, as of the date or the projected" and insert "that the borrower had the ability to repay the home loan as required under IC 24-9-3-1.1;"

Page 21, delete lines 12 through 14.

Page 21, line 36, delete "'closing documents" refers to at" and insert "'business day" means a day on which the offices of a business entity are open to the public for carrying on substantially all of the entity's business functions.

Sec. 4. As used in this section, "closing agent" has the meaning set forth in IC 6-1.1-12-43(a)(2).

Sec. 5. As used in this section, "closing documents" means the HUD-1 or HUD-1A settlement statement required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

Sec. 6. (a) As used in this section, "creditor" means a person:

(1) who regularly extends home loans that are subject to a finance charge or that are payable by written agreement in more than four (4) installments; and

(2) to whom the debt arising from a home loan transaction is initially payable on the face of the evidence of indebtedness or, if there is no evidence of indebtedness, by agreement.

(b) The term includes a mortgage broker in any home loan transaction in which the mortgage broker is required or allowed to provide the good faith estimates required under the federal Real

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Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

Sec. 7. (a) Not later than October 1, 2009, the homeowner protection unit established by the attorney general under IC 4-6-12 shall prescribe a form that:

- (1) shall be used by creditors under subsection (b); and
- (2) informs a borrower of the borrower's rights under section 8 of this chapter.

(b) A creditor that seeks to issue a home loan in Indiana after December 31, 2009, shall provide the notice described in subsection (a) to the borrower at the same time that the creditor provides the good faith estimates required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

Sec. 8. (a) Subject to subsection (c), a closing agent in a home loan transaction shall permit the borrower to inspect the closing documents, completed to set forth those items that are known to the closing agent at the time of inspection, not later than one (1) business day before the closing of the home loan. In the case of a purchase money home loan, items related only to the seller's transaction may be omitted from the closing documents.

(b) The closing agent shall make the closing documents available to the borrower for inspection under subsection (a):

- (1) at the office of the creditor or the closing agent;
- (2) through the United States mail;
- (3) by facsimile; or
- (4) through any other commercially reasonable means.

(c) A borrower may waive the right under subsection (a) to inspect the closing documents with respect to a home loan by providing a written notice of waiver to the closing agent at or before the time of closing.

(d) If:

- (1) the borrower requests to inspect the closing documents under subsection (a); and
- (2) either:
  - (A) the closing agent does not permit the borrower to inspect the closing documents within the time specified in subsection (a) or in the manner specified in subsection (b); or
  - (B) any items required to be set forth in the closing documents are incomplete at the time of the borrower's inspection;

the borrower is entitled to delay or reschedule the closing without

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penalty and without forfeiting the right to enter into the home loan or, in the case of a purchase money home loan, into the purchase contract. A borrower that exercises the right to delay or reschedule a closing under this subsection must offer to reschedule the closing for a date that is not later than three (3) business days after the date of the closing that the borrower seeks to reschedule, subject to the availability of the other parties to the transaction.

(e) Subject to subsections (f), (g), and (h) and section 9 of this chapter, if the terms of the home loan set forth in the closing documents inspected by the borrower under subsection (a) differ from the terms of the home loan presented to the borrower at the time of the closing, the borrower is entitled to:

- (1) delay or reschedule the closing without penalty and without forfeiting the right to enter into the home loan or, in the case of a purchase money home loan, into the purchase contract; and
- (2) if the creditor does not conform the terms of the home loan to the terms set forth in the closing documents inspected by the borrower under subsection (a), bring an action against the creditor (or against any subsequent holder or assignee of the home loan if the home loan proceeds to closing) for:

(A) actual damages, including:

- (i) consequential damages; and
- (ii) if the home loan does not proceed to closing, any damages suffered by the borrower as a result of not entering into the home loan or into the purchase contract;

(B) if the home loan proceeds to closing, statutory damages equal to two (2) times the difference between:

- (i) the finance charge (as described in 15 U.S.C. 1638(a)) that would result from the maximum interest rate set forth in the actual loan documents; minus
- (ii) the finance charge (as described in 15 U.S.C. 1638(a)) that would result from the maximum interest rate set forth in the closing documents inspected by the borrower under subsection (a);

if the finance charge set forth in the actual loan documents is greater than finance charge set forth in the closing documents inspected by the borrower under subsection (a);

(C) reasonable costs and attorney's fees; and

(D) injunctive, declaratory, and other equitable relief as the court determines appropriate.

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A borrower that exercises the right to delay or reschedule a closing under subdivision (1) must offer to reschedule the closing for a date that is not later than three (3) business days after the date of the closing that the borrower seeks to reschedule, subject to the availability of the other parties to the transaction.

(f) For purposes of subsection (e), "terms", with respect to a home loan, means any terms identified as loan terms in the HUD-1 or HUD-1A settlement statement required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

(g) For purposes of subsection (e), a term set forth in the closing documents presented to the borrower at the time of the closing is not considered to differ from the same term set forth in the closing documents inspected by the borrower under subsection (a) if the difference between the two (2) terms:

- (1) is within any applicable tolerance for accuracy prescribed in the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended; or
- (2) is the result of the expiration of an interest rate lock-in period, or other interest rate guarantee, between the time of the borrower's inspection of the documents under subsection (a) and the time of the closing, if the term at issue is the interest rate applicable to the home loan.

(h) An action under subsection (e)(2) must be brought not later than five (5) years after:

- (1) the closing of the home loan, if the home loan proceeds to closing; or
- (2) the date of the first scheduled closing with respect to the home loan, if the home loan does not proceed to closing.

Sec. 9. (a) In addition to the remedies available to the borrower under section 8(e) of this chapter, if the terms of a home loan set forth in the closing documents inspected by a borrower under section 8(a) of this chapter differ from the terms of the home loan presented to the borrower at the time of the closing, the attorney general, acting through the attorney general's homeowner protection unit established under IC 4-6-12, may, upon the attorney general's own motion or upon receiving a complaint from the borrower or any other person involved in the closing, investigate the circumstances surrounding the home loan to determine:

- (1) the reasons for the discrepancy between the terms of the home loan set forth in the closing documents inspected by the

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borrower under section 8(a) of this chapter and the terms of the home loan presented to the borrower at the time of closing;

(2) whether there was an attempt by the creditor to deceive or defraud the borrower by presenting different terms at the time of the closing;

(3) whether the creditor involved in the closing has engaged in a pattern or practice of presenting loan terms at the time of closing that differ from the loan terms set forth in closing documents inspected by borrowers before scheduled closings under section 8(a) of this chapter; and

(4) whether the creditor's actions in the case being investigated constitute a violation of:

(A) the federal Truth in Lending Act (15 U.S.C. 1601 et seq.);

(B) the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended; or

(C) any other federal laws or regulations concerning mortgage lending;

as authorized by IC 4-6-12-3. In conducting an investigation under this section, the attorney general may cooperate with any entity described in IC 4-6-12-4 that may have jurisdiction in the matter, as authorized by IC 4-6-12-5.

(b) Subject to subsection (d), if, after an investigation conducted under subsection (a) the attorney general determines that:

(1) there was an attempt by the creditor to deceive or defraud the borrower by presenting different terms at the time of the closing; or

(2) the creditor involved in the closing has engaged in a pattern or practice of presenting loan terms at the time of closing that differ from the loan terms set forth in closing documents inspected by borrowers before scheduled closings under section 8(a) of this chapter;

the attorney general may pursue any enforcement action or penalty available under IC 24-9-8 for a violation of this article, including bringing an action under IC 24-5-0.5, as authorized by IC 24-9-8-1. In addition, the attorney general may file a complaint with any entity described in IC 4-6-12-4 that may have jurisdiction over the matter, as authorized by IC 4-6-12-5.

(c) If, after an investigation conducted under subsection (a), the attorney general determines that the creditor has violated:

(1) the federal Truth in Lending Act (15 U.S.C. 1601 et seq.);

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(2) the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended; or

(3) any other federal laws or regulations concerning mortgage lending;

the attorney general may, to the extent authorized by federal law, enforce compliance with the federal statutes or regulations described in this subsection or refer the suspected violation to the appropriate federal regulatory agencies, as authorized by IC 4-6-12-3.

(d) Any action by the attorney general under this section must be brought not later than five (5) years after:

(1) the closing of the home loan that prompted the investigation, if the home loan proceeded to closing; or

(2) the date of the first scheduled closing with respect to the home loan that prompted the investigation, if the home loan did not proceed to closing.

Sec. 10. (a) If a closing agent knowingly or willfully fails to permit a borrower in a home loan transaction to inspect the closing documents with respect to the home loan:

(1) within the time specified in section 8(a) of this chapter; or

(2) in the manner specified in section 8(b) of this chapter;

the closing agent is subject to a civil penalty of twenty-five dollars (\$25), unless the borrower has waived the borrower's right to inspect the closing documents under section 8(c) of this chapter.

(b) A penalty described in subsection (a):

(1) may be enforced by the state agency that has administrative jurisdiction over the closing agent in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and

(2) shall be paid into the home ownership education account established by IC 5-20-1-27.

(c) A closing agent is not liable for any other damages claimed by a customer because of the closing agent's failure to comply with this chapter."

Page 21, delete lines 37 through 42.

Delete pages 22 through 27.

Page 28, delete lines 1 through 15.

Page 29, line 12, delete "A" and insert "**Except as provided in IC 24-9-3-1.1(b), a**".

Page 29, line 23, delete ", other than a violation or an".

Page 29, line 24, delete "alleged violation of IC 24-9-3-1.1(d)",.

Page 30, line 7, delete "IC 24-9-3-1.1(d)." and insert

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"**IC 24-9-3-1.1(a).**".

Page 32, line 10, delete "IC 24-5-23.5-11(d)." and insert "**IC 24-5-23.5-10(d).**".

Page 32, line 32, delete "that recommends a home loan to, or procures a home loan" and insert "**licensed, required to be licensed, registered, or required to be registered under IC 23-2-5 that:**

**(1) recommends a first lien mortgage transaction to a creditor; or**

**(2) recommends a first lien mortgage transaction to, or procures a first lien mortgage transaction on behalf of, a borrower).**"

Page 32, delete lines 33 through 34.

Page 32, line 38, delete "issues" and insert "**makes**".

Replace the effective date in SECTION 25 with "[EFFECTIVE UPON PASSAGE]".

Page 32, line 42, delete "**IC 24-9-5-1(b)(2)**" and insert "**IC 24-9-4.5-10(c) (Concerning a closing agent's failure to permit a borrower in a home loan transaction to inspect the closing documents in the transaction not later than one (1) business day before the closing of the home loan).**".

Page 33, delete lines 1 through 2.

Page 33, line 5, delete "IC 24-9-5-4(a)" and insert "**IC 24-9-5-1(b)**".

Page 33, line 6, delete "that recommends or issues to," and insert "**or other person that recommends or makes to,**".

Page 33, between lines 7 and 8, begin a new paragraph and insert:  
 "SECTION 27. IC 34-30-2-96.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 96.8. IC 24-9-5-4(a) (Concerning a creditor or other person that recommends or makes to, or procures on behalf of, a borrower a home loan).**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1176 as printed February 13, 2009.)

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